### b. The Commission's Authority To Regulate CMRS Rates.

By itself, Congress' amendment of Section 332 in the Omnibus Budget Reconciliation Act of 1993 exhibited Congress' intention that the Commission occupy the field of CMRS entry and rate regulation. Going one step further, the Telecommunications Act of 1996 removed the need to interpret such authority into Section 332. Section 251 governs interconnection and provides that every telecommunications carrier has a duty to interconnect with other carriers. As regards incumbent LECs, Section 251(c)(2) provides that such interconnection applies to both telephone exchange and exchange access services, and that interconnection must be available at any technically feasible point "on rates, terms and conditions that are just, reasonable, and non-discriminatory." By its terms, Section 251 applies equally to interconnection for intrastate and interstate services between telecommunications carriers.

Section 251(d)(1) grants the Commission authority to "complete all actions necessary to establish regulations to implement the requirements of this section." That grant of plenary authority encompasses, among other things, the rates charged by CMRS providers to LECs for the termination of LEC-originated local exchange traffic. Further, Section 251(i) confirms that the Commission retains full authority under Section 201 of the Communications Act. Section 201(a) authorizes the

Commission to require common carriers to "establish physical connection with other carriers." 47 U.S.C. § 201(a). Further, Section 201(b) requires all common carriers to charge just and reasonable rates and the Commission has jurisdiction under Sections 1 and 4(i) of the Communications Act to adopt regulations to implement that provision.

Finally, Sections 251(d)(3)(B)&(C) of the 1996 Act expressly limit the ability of a state regulatory body to enforce access and interconnection obligations. Those sections of the 1996 Act make clear that a state may not enforce regulations that are inconsistent with the interconnection terms and conditions that the Commission is currently establishing pursuant to Section 251(d)(1). This section clearly establishes the Commission as the primary regulator of interconnection rates, terms and conditions, and permits state regulation only to the extent that it is consistent with the standards established by the Commission. Therefore, the Telecommunications Act of 1996 confirms the Commission's plenary and exclusive authority, consistent with Section 332(c)(3) of the Communications Act, to occupy the field of CMRS rate and entry regulation.[43]

---

[43] While the Commission continues to derive its authority over CMRS interconnection from Section 332, as a matter of equity and sound public policy, the Commission should apply the interconnection standards that it establishes for other carriers under Section 251 of the Telecommunications Act of 1996 to CMRS carriers as well. Failure to accord to CMRS

Continued on following page

### c. The Commission Has The Authority To Void Existing Interconnection Contracts In Order To Implement Its CMRS Interconnection Rules.

As PageNet discusses in Section II(A), *supra*, the CMRS interconnection arrangements currently in effect reflect the inferior negotiating position of CMRS providers and establish excessive and unreasonably discriminatory rates, and overly burdensome terms and conditions upon PageNet and other CMRS carriers. In order for fair and equitable CMRS interconnection rates, terms and conditions to be implemented, these existing interconnection contracts must be voided. As discussed below, such relief is well within the Commission's authority, and is well established in Commission decisions and court precedent.

The Commission has taken action voiding individual carrier contracts repeatedly, both as a result of its own policy initiatives and federal legislation. For example, when the Commission introduced the LEC access charge regime, it effectively voided the "ENFIA" contracts that had previously governed compensation for LEC-provided originating and

---

Continued from previous page

carriers the same interconnection rights enjoyed by other carriers would result in a discriminatory classification, in contravention of Section 202(a) of the Act.

terminating access.[44] Similarly, the Commission's actions in implementing the Cable Television Consumer Protection and Competition Act of 1992 effectively voided effective agreements between cable operators and cable programming services.[45]

While the Commission does not have unfettered discretion to void existing contracts, it is fully empowered to do so upon a finding that find that the existing contracts are "unjust, unreasonable, unduly discriminatory, or preferential."[46] As discussed in detail herein, the currently effective CMRS interconnection agreements are patently discriminatory and otherwise unreasonable, especially in light of the interconnection standards that the Telecommunications Act of 1996 establishes for other carriers. The Commission therefor can -- and indeed must -- void the existing agreements and replace them with reasonable, fully compensatory interconnection rates, terms and conditions, as set forth in these comments.

---

[44] *MTS and WATS Market Structure*, 97 FCC 2d 682, 764 (1983).

[45] *Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 8 FCC Rcd 2965, 2988 (1993).

[46] *MCI Telecommunications Corp. v. FCC*, 665 F.2d 1300 (D.C. Cir, 1981); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

## III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF PAGING TRAFFIC

### A. The Commission's Procompetitive Interconnection Policies Have Been Ignored By Most LECs.

The Commission has succinctly recognized that the ability to interconnect is increasingly important because "telecommunications is increasingly provided by a system of interdependent interconnected networks, often referred to as a 'network of networks'." NPRM at ¶ 8. The Commission simultaneously has recognized that efficient interconnection benefits both providers and subscribers of service (*see* ¶ 9), and that such benefits can be negated if interconnection is not generally available at reasonable rates and upon reasonable terms. As the Commission correctly notes, "the availability of interconnection cannot be divorced from its price. . . . An interconnection obligation is undermined if the charges imposed for interconnection are excessive, and society will not enjoy the benefits. . . ." NPRM at ¶10.

After years of struggle with the local exchange companies for interconnection, PageNet believes that most if not all local exchange carriers enable their local exchange subscribers to terminate calls to paging subscribers However, PageNet's experience in negotiating interconnection agreements also demonstrates that the LECs have consistently used their monopoly

position in the local exchange market to dictate unreasonable rates, terms and conditions for interconnection with the paging carriers, and to delay the introduction of advanced services or service improvements.

Paging carriers have not yet been accorded by the LECs the co-carrier status that the Commission recognized years ago. As a result, in most instances of which PageNet is aware, paging carriers continue to be charged excessive rates, are required to pay for facilities which the paging carriers do not need in order to offer their services, and are charged by almost every LEC for facilities which are already fully paid for by the originating end user. In short, the interconnection obligations imposed on the LECs by this Commission have been consistently ignored, thereby undermining the public benefits the Commission has sought to achieve on behalf of telecommunications consumers. The Commission must use the opportunity provided by the instant proceeding to eliminate unreasonable LEC pricing practices and delaying tactics, and to establish reasonable and effective CMRS interconnection arrangements.

### 1. The LECs' Practice Of Charging The Paging Carrier For The Facility Between The LEC Central Office And The MTSO Constitutes An Unreasonable Practice.

One perverse strategy almost universally applied by the LECs has been to ignore the co-carrier status of paging carriers and

to treat them as customers of LEC access service. As a result of this practice, the LECs are double-recovering -- and in some cases triple-recovering -- charges for facilities that are paid for by the originating end user. This flagrant over-recovery is illustrated in Diagram 2, *infra*. That diagram illustrates a typical call route for a local or interstate tandem-switched call that originates on the LEC network and terminates on the LEC network, or on the wireless network of a paging carrier, and identifies the LEC tariffed rates that are associated with each segment of the transmission.

As Diagram 2 depicts, in each case, the transmission segment between the LEC tandem office and the terminating office (be it the LEC's end office or the paging carrier's MTSO) is provisioned by the LEC *and is paid for by the originating end user*. If the originating portion of the call is interstate or interLATA, i.e., is routed through an interexchange carrier network, the IXC pays the LEC for the tandem switched transport segment that includes the tandem/end office link,[47] and passes the charge through to

---

[47] Some LECs do not charge the IXC for the link between the tandem and the CMRS MTSO (or for end office switching). The image of fairness which absence of charges seems to create is, in truth, an illusion. Often, the net switched access transport (dedicated transport and tandem switched transport elements) distance from the IXC's POI (point of interchange) to a terminus at the CMRS Type 2A serving LEC tandem will be as great or even greater than if the CMRS MTSO were treated by the LECs as the network terminating end office it truly

Continued on following page

the originating end user customer. In the case of a local transmission, the LEC collects the charges that recover the cost of the interoffice link directly from the originating end user. In either case, however, the transmission segment to the terminating end office or paging carrier MTSO is fully paid for by the originating end user.

In a typical paging interconnection arrangement, however, the paging carrier is forced to pay the LEC an additional charge -- typically a flat rate charge for a dedicated or virtual dedicated circuit between the tandem and the MTSO. This practice constitutes flagrant double-recovery by the LEC and is wholly unjustified. Even more outrageous, several LECs further require the paging carrier to pay an additional per minute-of-use charge for the same facility, resulting in a "triple dip" by the LEC for

---

Continued from previous page

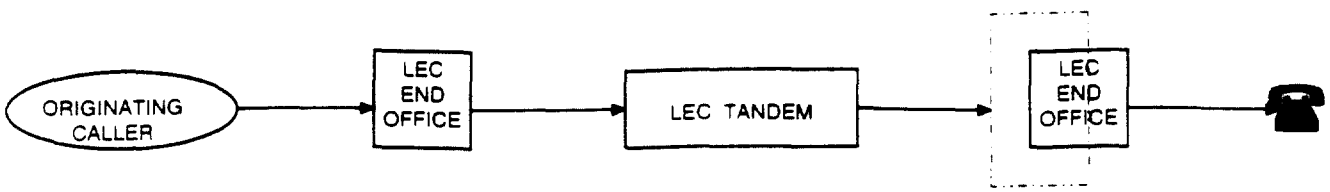
is. Accordingly, the LEC's revenue is even more excessive. Plus, by unilateral LEC action, CMRS providers are being denied terminating (and originating, where appropriate) revenues from IXC traffic. The LECs routinely pass access traffic to CMRS providers without benefit of an access service request (ASR) or any other documentation to authorize carriage of the traffic and/or enable ticketing, reporting, and billing arrangements which would permit the CMRS provider to share in the access revenue stream. Revenue sharing with CMRS providers could be accommodated either through the CMRS provider directly billing the IXC if IXC traffic can be reasonably identified to the CMRS provider situated behind the LEC tandem, or through one of the extant multi-LEC access revenue allocation/compensation mechanisms, such as meet-point billing.

the same transmission segment. These LEC pricing practices are discussed in the Affidavit of Vic Jackson, appended as Appendix C. These pricing practices not only grossly inflate the cost of paging interconnection, they provide excessive and unjust compensation to the LEC. The Commission must prohibit this practice.

DIAGRAM 2

# CALL ROUTING AND COST COVERAGE BY LEC

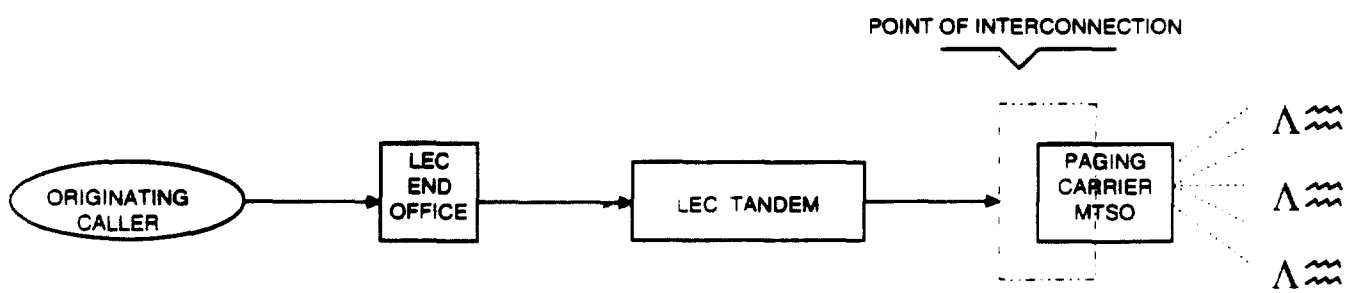
## LEC-PROVIDED TERMINATION -- LOCAL CALL




1

COSTS COVERED BY LEC CHARGES TO END USERS

## PAGING CARRIER TERMINATION -- LOCAL CALL



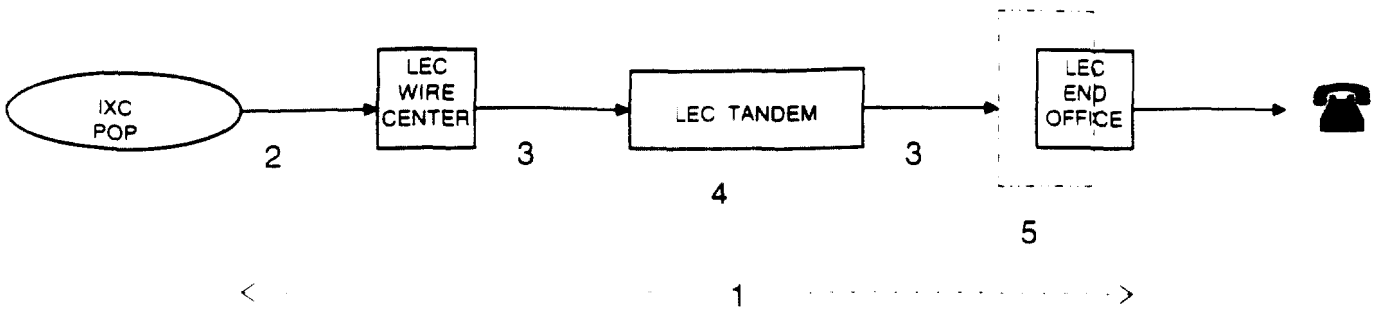

1

COSTS COVERED BY LEC CHARGES TO END USERS

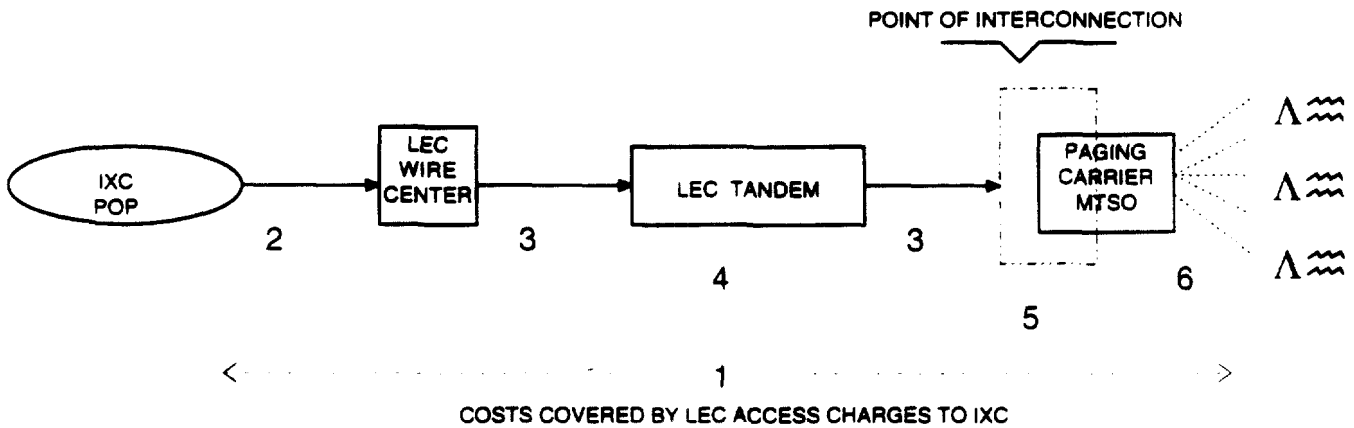
1 = LEC Basic Local Service Flat Rate

## CALL ROUTING AND COST COVERAGE BY LEC

### LEC-PROVIDED TERMINATION -- LONG DISTANCE CALL




### PAGING CARRIER TERMINATION -- LONG DISTANCE CALL




2 = LEC Entrance Facility
3 = LEC Tandem Switched Transport
4 = LEC Tandem Switching
5 = LEC Terminating Local Switching
6 = Paging Carrier switching and local transport functions and charges

### 2. The Commission Must Withdraw Its Tentative Proposal To Treat The Link Between The LEC Tandem And The MTSO As An Entrance Facility.

The Commission tentatively has concluded that "rates for dedicated transmission facilities connecting LEC and CMRS networks should be set based on existing access charges for similar transmission facilities."[48] This approach to compensation for interconnection between LECs and paging carriers is entirely inappropriate because it does not accurately reflect the network function provided by the LEC, and more importantly, because the LEC is already being fully compensated for providing this transport segment by the charges to customers of the LEC.

These points are illustrated in the call routing arrangement depicted in Diagram 2, from the previous subsection. As discussed in the preceding section, Diagram 2 illustrates the routing of a typical tandem switched call, and identifies the network function provided by each carrier involved in completing the call and the revenue source for each function provided.

In such a typical call scenario, the LEC-provided services on both the originating and terminating ends of the call are compensated by LEC access charges that are imposed upon and paid by the IXC, if the call is handled by an IXC, or that are paid

---

[48] NPRM at ¶ 3.

directly to the LEC if the call is not. In the former case, the IXC passes these charges through to the end user customer that originates the call.[49] In the latter case, the originating caller pays the LEC directly. In either case, the originating end user customer fully compensates the LEC for performing all switching and transport functions between the originating caller location and the LEC's terminating end office, or its equivalent.

As Diagram 2 makes clear, in the case of a paging call, the originating end user customer pays the same charges to the LEC that are paid in a LEC-terminated call. The LEC costs associated with providing the link between the LEC tandem and the paging carriers' MTSO for an IXC-originated call are fully recovered in the tandem switched transport charge paid by the end user (through the IXC), just as they are in the case of a call terminated on the LEC network.[50] Significantly, the diagram also makes clear that the Commission's assumption that "the dedicated transport facilities used to connect LEC and IXC networks are similar or identical to the facilities connecting LEC and CMRS

---

[49] If an IXC is not used to provide interstate routing, all rate elements are collected directly by the LEC from the end user.

[50] In fact, costs associated with the "trunk side" of the LEC terminating end office or the paging MTSO are also equally covered.

networks"[51] is incorrect. Rather than the entrance facility (which typically provides the link between and IXC and LEC network) the link between the MTSO and the LEC network is functionally identical to the LEC's tandem switched transport element. The LEC is fully compensated for providing this transport segment by the originating end user's payment -- through the IXC -- of the LEC's tandem switched transport charge to the IXC.

The fact that LECs are compensated for the tandem/MTSO link reflects common business practice -- LEC services typically are ordered in reference to end points, and the LEC assumes responsibility for the transmission path between the requested points of origination and termination.[52] In the case of a LEC-provided termination, the end point is the terminating party's location, and the "originating" LEC delivers the traffic to the end office serving that location as an integral part of its

---

[51] NPRM at ¶ 64.

[52] Customers with unique needs may depart from this practice and request control over the specific route that the transmission takes. In this case, they specify the end offices or tandems through which they want the traffic routed. Such requests are treated as service options and carry an additional charge. The tariffed rate elements that reflect these additional charges typically are termed Alternate Route Diversity, Alternate Serving Wire Center, or Other-Than-Normal Call Routing.

service.[53] In the case of a call terminating to a paging carrier's customer, the paging carrier's MTSO replaces the "terminating" LEC's end office, and the "originating" LEC delivers the traffic to the MTSO as an integral part of its service. The functions that the "originating" LEC provides are identical in both cases, and the attendant form of compensation to both the "originating" and "terminating" LEC -- payment by the originating customer -- should also be identical in both cases.

This compensation structure is fully consistent with the Commission's Part 69 Rules for access services. Section 69.111(d) defines tandem-switched transport as the transmission path between the LEC tandem and the end office serving the terminating location. As Diagram 2 illustrates, for example, under Type 2 interconnection, traffic routed to a paging carrier's network does not transit a LEC terminating end office, but is routed directly from the LEC tandem to the paging carrier's MTSO. The costs associated with this transmission path are therefore recovered through the tandem-switched transport charge (or the direct-trunked transport charge if a dedicated facility is employed) and ultimately are paid by the end user customer that originates the call.

---

[53] This applies both to situations in which one LEC provides full end-to-end service, and in which different LECs are involved in provisioning the call.

In fact, this compensation structure for local exchange traffic is already reflected in interconnection tariffs filed by New York Telephone and as proposed by Ameritech in its five-state region. As described in the Affidavit of Vic Jackson in Appendix C, both of these LECs have concluded that they are responsible for providing the transport link between their tandem offices and PageNet's MTSOs. PageNet submits that a similar provision should govern all LEC/paging carrier interconnection agreements. Failure to do so effectively will allow LECs to continue to double-recover the cost of this transmission link in violation of the Commission's stated policy goals and the dictates of the 1934 and 1996 Acts.

Despite the refusal of most LECs to accept their own responsibility for their own traffic in the paging context, some have clearly recognized the responsibility of co-carriers for the traffic they originate from the point of origination to the point of interconnection with the other co-carrier in the CMRS arena. For example, in Bell Atlantic territory, in the cellular interconnection agreements of which PageNet is aware, each requires the cellular carrier to subscribe to Bell Atlantic for the facility between the MTSO and the LEC central office. Under these agreements, however, the cellular carriers are appropriately required to pay Bell Atlantic for calls originated on the cellular network as it is the cellular carrier's

responsibility to carry the traffic to the point at which it interconnects with the LEC, in this instance to the LEC CO. The subscription rate is set based on the percentage of traffic originating with the cellular carrier. Conversely, under these agreements, the cellular carrier is not required to pay for the facility insofar as the facility is used for the transport of calls which originate on the landline network and terminate on the wireless network.

These Agreements reflect a movement toward the appropriate division of responsibility between cellular and landline co-carriers; yet Bell Atlantic has not been willing to adopt the same conceptual framework for paging co-carriers. Further, Bell Atlantic has not even been willing to allow paging carriers to subscribe to the cellular interconnection offerings they make available to the paging carrier's cellular competitors. It has refused in spite of the Commission's admonition, as reflected in the NPRM, that a "LEC may not deny to a CMRS provider any form of interconnection arrangement that a LEC makes available to any other carrier or other customer, unless the LEC meets its burden of demonstrating that the provision of such interconnection is either not technically feasible or economically reasonable" (NPRM at ¶ 21).

## IV. APPLICATION OF THESE PROPOSALS

As discussed throughout these comments, the Commission's policy goals and the Communications Act, as amended by the Telecommunications Act of 1996, require the establishment of reasonable interconnection and termination compensation arrangements for paging carriers. These interconnection arrangements require the following:

1) The Commission should make clear that LECs may not impose upon paging carriers any charges for the inter-carrier transmission link between the LEC's switch and the paging carrier's mobile telephone switching office.[54]

2) The Commission should require LECs to compensate paging carriers for the switching and transport functions that the paging carriers perform in terminating traffic that originates from the LEC network. The rate of compensation should be expressed as a charge per call derived from the LECs' interstate tariffed rates.[55] The average paging call is 15 seconds (25% of

---

[54] To the extent that, in the future, PageNet does originate traffic that terminates on the LEC networks, PageNet is prepared to pay the LECs reasonable compensatin for such termination.

[55] PageNet notes that, as a policy matter, and to be consistent with the costing approach adopted in the Telecommunications Act of 1996, it is far preferable to establish rates in reference to the relevant carrier's costs of providing

Continued on following page

a minute). The per-call charge should be set at 80% of one minute's charge. The 80% factor is needed in order to reflect the call setup function performed by the paging carrier.[56] For example, using access charges from BellSouth's federal tariff, the rate would be:

---

Continued from previous page

service. In most cases, reference to the LECs' tariffed access charges is inappropriate for the determination of co-carrier compensation. In the instant case, however, reference to LEC access charges as a surrogate for the paging carriers' costs of terminating traffic is reasonable, and indeed the only practicable means of proceeding. Unlike the LECs, paging carriers have not been subject to rate regulation, and so have not developed the accounting infrastructure required of rate-regulated carriers. Moreover, the imposition of such rate regulation upon paging carriers would constitute an expansive new form of regulation that is both unnecessary and flatly inconsistent with the letter and spirit of the Telecommunications Act of 1996.

[56] Usage-sensitive costs comprise two categories of cost, set-up costs and conversion time costs. The set-up costs are the same for each call, no matter how long, whereas conversion time costs are proportional to the duration of a call. LEC access charges do not distinguish between the two; instead, they reflect a per-minute cost based on an average call length of about 3.5 minutes per call. Therefore, the per-minute rate reflects only about 30% (1/3.5) of the set-up cost incurred. If the set-up cost is $.005 per call and conversion minute costs are $.006 per minute, the cost for a 3.5 minute call is $.026 (.005 + .0035 x .006); the average cost per minute is $.00743 (.026/3.5), which is how access charges are set. However, the cost of a 15-second call would be $.0065 (.005 + .0025 x .006). As a result, the cost of a 15 second call is 88% of the average cost of a 3.5 minute call. This is the basis for determining the percentage used to derive the per-call compensation to paging carriers.

| | | |
|---|---|---|
| | LEC local switching charge | $.00755/minute |
| Plus | | |
| | LEC local transport termination charge | .00036 |
| Plus | | |
| | LEC local transport facility charge | .00000 |
| | Total: | $.00791/minute |
| | x 80% = | $.00633/call |

Paging carriers reserve the right to petition the Commission to establish rates that depart from this formula, upon a showing that their unique costs justify different rates.

3) The initial standards for interconnection of LEC and CMRS carrier networks should be fully consistent with the standards established for interconnection with other carriers. When the Commission completes its proceeding to establish detailed interconnection standards -- as required by the Telecommunications Act of 1996 -- these standards should be fully and uniformly applicable to paging and other CMRS carriers.

## V. CONCLUSION

For the reasons discussed above PageNet respectfully requests that the Commission adopt rules and regulations concerning interconnection and co-carrier compensation for paging traffic in accordance with the discussion contained herein.

Respectfully submitted,

**PAGING NETWORK, INC.**

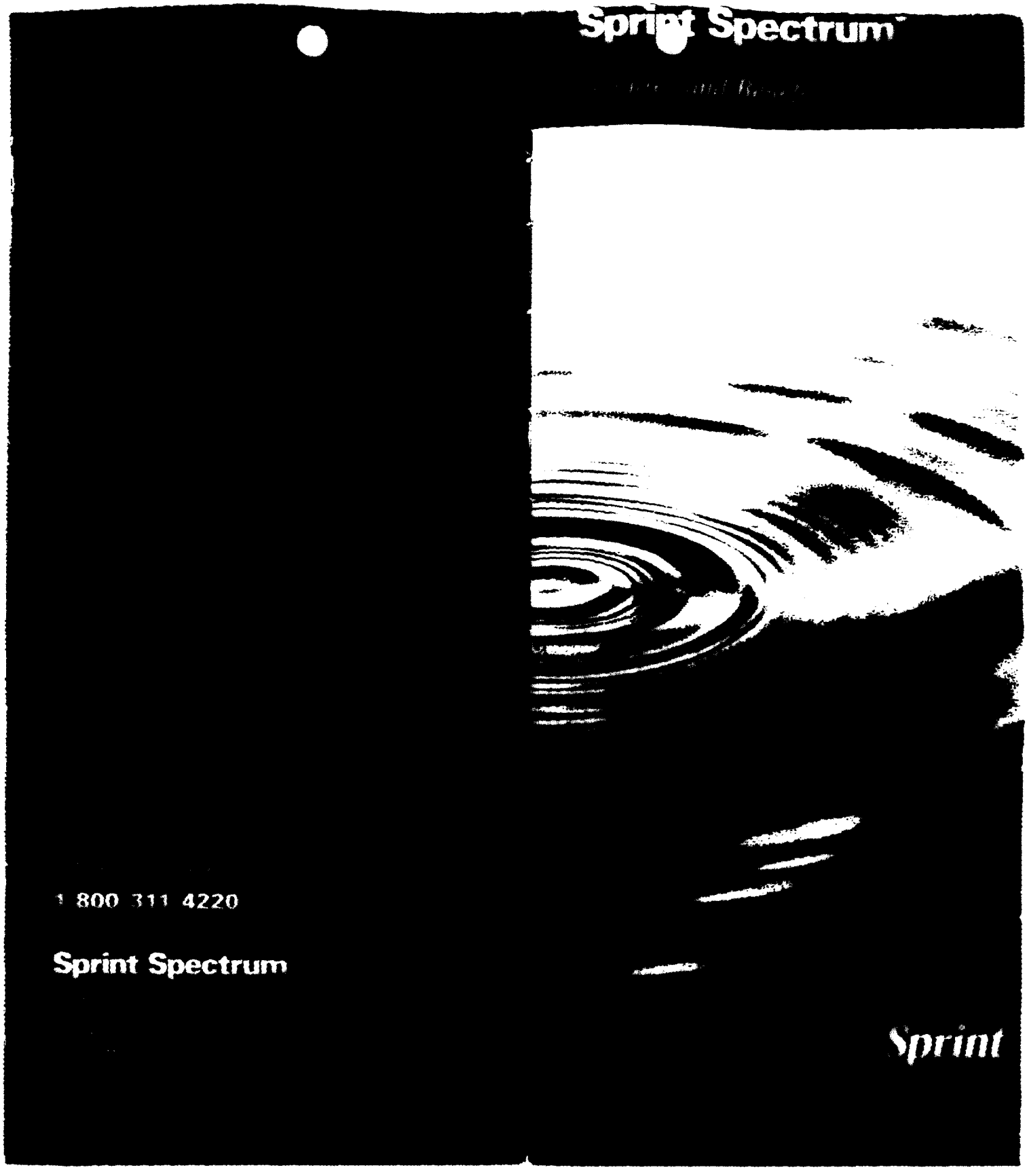
By: Judith St. Ledger-Roty

Judith St. Ledger-Roty
Jonathan E. Canis
Paul G. Madison
**REED SMITH SHAW & McCLAY**
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, DC 20005
(202) 414-9200

Its Attorneys

March 4, 1996

# Appendix A

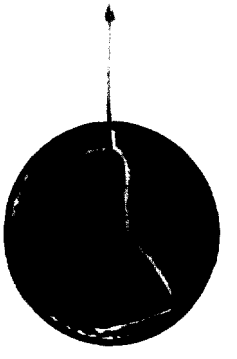

Sprint Spectrum
1 800 311 4220
Sprint Spectrum
Sprint

Sprint Spectrum™

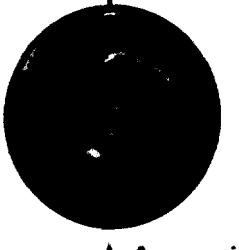
## The Future is Here.

The new Sprint Spectrum system puts the full spectrum of personal communication in the palm of your hand; with an unprecedented range of features and services. From crystal clear voice quality to convenient text messaging and voicemail . . . to call privacy . . . and so much more.

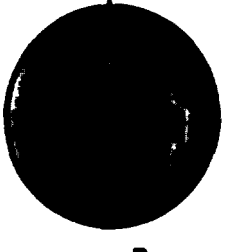
The Sprint Spectrum system will help you manage your life a little better. While you are in the Sprint Spectrum service area, you can make calls to — and receive calls from — anywhere in the world. You can also receive voice, text and numeric messages at any time . . . so that you can stay in touch — even when your handset is turned off.



Phone



Answering Machine



Pager

## Your All-in-One Personal Communication System

**Sprint Spectrum gives you a personal phone, answering machine and pager that fits in the palm of your hand and offers the features you need:**

- 100% Digital state-of-the-art network
- Answering machine and pager
- Exceptional voice quality
- Call privacy and security
- Caller ID
- Voicemail
- Text Messaging
- Call Waiting
- Call Forwarding
- Call Barring
- Information Service
- Free 911 Access

# Features and Benefits

## 100% Digital Wireless Network

**The next generation of wireless communications.** Sprint Spectrum is the first Personal Communication System in the United States. Because the network is 100%-digital, it gives you the highest quality, most reliable service available today for your communications needs. Digital technology is the reason Sprint Spectrum can offer you so many new features on a wireless communications system. And more great services are on the way.

## Answering Machine and Pager

**Stay in touch.** Your handset is a personal phone with a built-in answering machine and pager. You can stay in touch even if you can't answer your phone, or it's busy or turned off. The Sprint Spectrum Answering Machine automatically answers those calls, takes messages for you and saves them until you have time to listen to them. What's more, it gives callers the option of sending you a numeric page (a phone number to call, displayed on your handset screen) instead of leaving a voice message.

*The Answering Machine and Pager feature is included free of charge with every Sprint Spectrum service subscription.*

## Exceptional Voice Quality & Clarity

**A new standard for wireless communications.** Tired of poor call quality on today's cellular phones? Sprint Spectrum gives you the answer.

- Crisp, clear communications
- Virtually static-free conversations
- No "cross-talk"
- Better in-building coverage

## Call Privacy and Security

**Say good-bye to eavesdropping.** Sprint Spectrum is the wireless system that brings you total privacy in wireless communications for the peace of mind you want in a wireless system. Now you can be sure that no one is listening in on your conversation.

Sprint Spectrum uses its unique digital technology to prevent eavesdropping and fraud by:

- Encrypting your calls — to prevent "listening in" by outsiders
- Authenticating callers during call set-ups — to prevent unregistered use of your phone number

These powerful capabilities give you complete call privacy and security, something that no other wireless communications technology can offer you today.